

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Z-TEL COMMUNICATIONS, INC.	}	
	}	
Complainant	}	
	}	
vs.	}	Docket No. 02-0160
	}	
ILLINOIS BELL TELEPHONE COMPANY,	}	
d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

EXHIBIT A

**Z-TEL COMMUNICATIONS, INC.'S
PROPOSED MODIFICATIONS TO THE ALJ'S
APRIL 23, 2002 ORDER**

**STATE OF ILLINOIS
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Complainant	}	
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vs.	}	Docket No. 02-0160
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ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	}	
	}	
Respondent	}	

Administrative Law Judge's Decision

By the Commission:

I. Procedural Background

On February 22, 2002, Z-Tel Communications, Inc. ("Z-Tel") filed with the Illinois Commerce Commission ("Commission") a verified Complaint against Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act ("Act"). In the Complaint, Z-Tel alleges that Ameritech provides untimely, inaccurate, unreliable and discriminatory notice to Z-Tel when a Z-Tel customer migrates to an alternative local exchange carrier. This notice is referred to as Line Loss Notification ("LLN"). Z-Tel alleges that this lack of reliable Line Loss Notice is a per se impediment to competition in violation of Sections 13-514 and 13-801 of the Act, as well as a breach of the Interconnection Agreement between Z-Tel and Ameritech.

Included in the Complaint was a Petition for an Order for Emergency Relief Pursuant to 220 ILCS 5/13-515(e). Z-Tel requested the Commission to enter an Order granting it emergency relief prohibiting Ameritech from marketing its Winback promotional offers to Z-Tel customers. On February 27, 2002, the Commission entered an Emergency Order granting Z-Tel the requested emergency relief, but limited the prohibition against soliciting to Z-Tel customers through Winback mailings, telemarketing efforts, or through its channel sales representatives for 15 days from the date that an Ameritech customer switches to Z-Tel as signaled by the EDI 865 Completion Notice.

* * *

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The evidence is clear that Ameritech uses its systems to generate the enhanced LLN that has information useful for Winback marketing that is not made available to Ztel in an 836 LLN. In fact, it became clear at the hearing that the only purpose of the enhanced LLN was to trigger

Winback marketing. (Tr. 411) Ameritech's billing is stopped through a different automatic process.

Any change to an end-user's (Ameritech and Z-Tel customers) service is made in a database called ASON (Ameritech Service Order Negotiation System.) Once that information is typed into the ASON database and the record change is entered, an Order is generated to provision services to the customer. ASON is the central processing database that is used to enter Change Orders to a customers' service for both Ameritech Retail and Wholesale orders. When a change order is made to an Ameritech customer's record in ASON, a "mirror" copy of that data file is delivered immediately to several Ameritech-retail operating units, including a downstream systems in Ameritech's retail operations which it refers to as the Service Order Interface. When the ASON record is changed due to a customer's changing their service, ASON will automatically distribute a mirror copy of that data record to the Service Order Interface which will in turn generated additional copies downstream so that other Ameritech departments have it. Ameritech's retail operations receive a mirror copy of the ASON record, while Z-Tel only receives the 836 LLN.

The OSS information that is provided to Ameritech's retail operations is superior to the limited information provided to Z-Tel in an 836 Line Loss Notification. The 836 Line Loss Notification given to Z-Tel contains essentially the telephone number, and the date of disconnect. However, the mirror record of the ASON file that is provided to Ameritech's retail operations contains significantly more information that can be useful in serving customers.

Failure to correct these problems in a timely manner has impaired the speed, quality and efficiency of OSS services used by Z-Tel. 220 ILCS 5/13-514(2). Many changes have been made by Ameritech and, in fact, the first issue was identified in January, 2001. (Ameritech Schedule F, p. 1). Ameritech argues that it has acted reasonably in addressing Z-Tel complaints. It is evident, though, that multiple problems have been identified for more than a year and Z-Tel has shown that not only does Ameritech provide itself with different and arguably better enhanced LLN, but that this enhanced LLN has given Ameritech a competitive marketing advantage. Ameritech's Winback personnel were able to send marketing materials in a shorter timeframe than Z-Tel. In order to level the playing field, we now turn to the remedies that Z-Tel requests.

2. Remedies

a. Parity Requirement

Staff recommends. . . .

Z-Tel should, however, have the option of receiving a more detailed OSS information about disconnected customers disconnect notice, containing the same data fields as that are currently sent to Ameritech's retail business units ~~currently sent to Ameritech Winback in the enhanced LLN~~. As a permanent solution, Z-Tel requests that Ameritech establish systems that will provide Z-Tel with the identical and instantaneous data from Ameritech's ASON

system that Ameritech provides its own retail databases. Z-Tel requests that this be in place by July 1, 2002. Staff supports a modified form of this request. In its Brief, Staff recommends that at a minimum, Ameritech should make available the option to Z-Tel to receive the same information as Ameritech provides to its retail organization today in form of the loss disconnect report in addition to receiving the 836 LLN.

Ameritech argues that this relief was not asked for or even mentioned in the complaint or amended complaint and for that reason, it cannot be granted. We disagree. Z-Tel requests, under Count I, that Ameritech be enjoined from Winback marketing “until such time as Ameritech provides identical Line Loss Notification to Ztel as it provides to its own retail operations.” (Amended Complaint at 14).

Ample evidence was provided at hearing showing that the enhanced LLN that Ameritech Winback receives contains more data fields and is generated at an earlier stage than the notice sent to Z-Tel. **In addition, the evidence shows that Ameritech provides copies of the records generated by the ASON database to Ameritech’s retail business units. These ASON records are the measure by which determine whether Ameritech is providing nondiscriminatory access to its OSS.** Until such time as Ameritech provides CLECs the option of receiving a mirror record of the ASON data record that is delivered to the Service Order Interface, ~~an enhanced notice~~, Ameritech Winback personnel are directed to only use the 836 LLN. CLECs rely on 836 notices for marketing as well as billing. While we believe that it would be inappropriate to require Ameritech to switch to using 836 notices for billing purposes, we do find that it would be beneficial for CLECs and customers for CLECs to have the option to receive a more detailed **OSS information about changes to customer’s records** ~~LLN~~. Once Ameritech has in place a system where Z-Tel can choose between the 836 LLN and/or a notice that contains as much information as that currently sent **to Ameritech’s retail business units** ~~to Ameritech Winback~~, then Ameritech Winback may use the enhanced LLN again.

Ameritech is directed to make this option available to Z-Tel by July 1, 2002. ~~We clarify, however, that we are not adopting Z-Tel’s proposal to receive instantaneous data from Ameritech’s ASON system, but that Ameritech will develop another LLN that will contain more information.~~

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e. Overbilling

In its Amended Complaint, Z-Tel requests that Ameritech be ordered to conduct a complete accounting, at its own expense, of the charges that have been assessed by Ameritech for Z-Tel’s purchase of UNEs, switched access and reciprocal compensation since January, 2001. For the first time in its Initial Brief, Z-Tel requests that an additional \$140,000 in damages be awarded for overbilling. Z-Tel argues that this would compensate Z-Tel for 7000 occurrences of overbilling at about \$20 per line for unbundled network elements for which Ameritech

assessed a charge, even though a customer had migrated to an alternative carrier. Z-Tel does not direct the Commission to the record for support of these numbers and no factual support is apparent from our review.

Ameritech agrees that it will conduct the audit to identify any overcharges assessed against Z-Tel resulting from the failure to deliver accurate line loss notification. We direct that Ameritech conduct an audit within 60 days of the date of this order, and provide Z-Tel with a report of the audit, as well as a full credit for any improper charges.

~~As we stated with respect to Z-Tel's indemnification request, the parties Interconnection Agreement governs and in fact contains procedures to be followed in the case of a billing dispute. Article XXVIII of the parties' Interconnection Agreement addresses audit rights, disputed amounts and dispute resolution. Section XXVIII.1 contains the procedures that parties are to follow in the event of a billing dispute, including the timeframes involved and the selection of an independent auditor. Section XXVIII.1.3 contemplates a refund with interest if an overcharge is confirmed by the audit. Under Section XXVIII.1.4, audits are at the auditing party's expense, unless the audit finds that the adjustment would be greater than two percent of the aggregate charges for the audited services during the period covered by the audit. If the results of this audit are in dispute, then either party may request an additional audit under Section XXVIII.1.5. (Ameritech Ex. 1.0, Schedule E).~~

~~The record in this case contains no evidence as to the amount of overbilling that Z-Tel has experienced. We are, therefore, left with no choice but to deny Z-Tel's request for monetary damages in this instance. If the actual amount of overbilling can be determined, we believe that is the proper course to follow. Additionally, in its Initial Brief, Ameritech states that it has agreed to a reconciliation, with Z-Tel's cooperation, of its charges to Z-Tel for wholesale services and to issue any credits that may be due. Therefore, we direct the parties to follow the dispute resolution procedures contained in their Interconnection Agreement, which are similar to the request in the Amended Complaint, that calls for an independent third party audit and if the overcharges reach a certain threshold, then Ameritech will be responsible for the costs of the audit.~~

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h. Penalties

Z-Tel requests in its amended Complaint that the Commission impose a penalty of up to \$30,000 or 0.00825% of Ameritech's gross intrastate annual telecommunications revenue, whichever is greater, for each violation of the Act, pursuant to the penalty provisions contained in Sections 13-516 and 5-202 of the Act.

The Commission finds that the imposition of penalties under Section 13-516 of the Act is ~~not~~ appropriate. The language of Section 13-516, states that:

Notwithstanding any other provision of this Act, for a second and any subsequent violation of Section 13-514 committed by a telecommunications carrier after the effective date of this amendatory Act of the 92nd General assembly ... *Each day of a continuing offense shall be treated as a separate violation for purposes of levying any penalty under this Section. The period for which the penalty shall be levied shall commence on the day the telecommunications carrier first violated Section 13-514 or on the day of the notice provided to the telecommunications carrier pursuant to subsection (c) of Section 13-515, whichever is later, and shall continue until the telecommunications carrier is in compliance with the Commission order.*
(220 ILCS 5/13-516(a)(2)).

Prior to this proceeding, Ameritech has not been found in violation of Section 13-514 since the effective date of the amendatory Act. In other words, the Commission has not found Ameritech to have committed an action prohibited by Section 13-514 since July, 2001. However, under the plain language of the statute, Ameritech is subject to penalties for each day that it is found to have violated Section 13-514. The Commission has found that Ameritech has violated 4 subsections of Section 13-514 of the Act. In addition, Ameritech has acknowledged that it has provided defective line loss notice to Z-Tel, and discriminatory OSS information since February 19, 2002, the date that Z-Tel served its 48-hour notice required by Section 13-515(c).

The Commission finds that Ameritech is subject to a penalty under Section 13-516 for each violation of Section 13-514, and for each day subsequent to February 19, 2002 that Ameritech provides discriminatory access to its OSS, and provides defective 836 LLN to Z-Tel. In addition, Ameritech is subject to a fine for each defective 836 LLN that is provided to Z-Tel after February 19, 2002 in an untimely manner, or that is inaccurate. The Commission will initiate a proceeding pursuant to Section 13-516 to identify the appropriate fines for each of these violations.

~~Therefore, based on the plain language of the statute, penalties cannot be imposed under Section 13-516. The Commission makes clear, however, that in any proceeding after this that finds Ameritech to be in violation of Section 13-514, penalties can be imposed pursuant to Section 13-516(a)(2).~~

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[Starting at Page 25.]

i. Performance Measure (MI 13)

The Commission finds that the LLN performance measure ("MI 13") needs to be improved. It is clear from the record in this case that MI 13 as it currently exists, is not

adequately measuring Ameritech's LLN failures. The performance measure shows Ameritech completing line loss notices in a timely manner in about 90-95% of the time. (Staff Ex. 1.0 at 14). Whereas, Z-Tel provided testimony that for the period from March 1, 2002 through March 11, 2002 (after the Complaint was filed) no less than 42% of the records received from Ameritech were provided to Z-Tel more than 6 days after the Ztel customer disconnected from Z-Tel. (Reith Direct Testimony at 9). There is clearly something wrong here. Staff witness Weber identified two problems with the way Ameritech measures its performance in delivering LLNs. First, the data Ameritech reports does not account for loss notifications that are supposed to be sent to a losing carrier but are not. Second, Ameritech measures the timeliness of its loss notification transactions from the time the completion notice is sent to the new carrier, instead of from the time the disconnect order completes for the losing carrier. Therefore, if Ameritech's service order completion notices to the new carriers are delayed, the performance measure would not account for the delay. (Staff Ex. 1.0 at 14).

Staff witness Weber testified that since January 1, 2002, 83 CLECs could have been affected by the loss notification issue. (Staff Ex. 1.0, p. 6). The performance measure needs to be redesigned to address the problems identified by Staff. Ameritech is directed to provide reports, to be reviewed by Z-Tel and Staff, describing its efforts in correcting the problems with MI 13.

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[Starting at page 26.]

V. Findings and Orderings Paragraphs

The Commission, having considered the entire record herein and being fully advised of the premises, is of the opinion and finds that:

- (1) Z-Tel Communications, Inc. is a Delaware corporation authorized to provide resold and facilities-based local and interexchange telecommunications services and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;
- (2) Illinois Bell Telephone Company d/b/a Ameritech Illinois is an Illinois corporation which is authorized to provide telecommunications services and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;
- (3) the Commission has jurisdiction over the parties and the subject matter contained herein;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (5) Z-Tel Communications, Inc. has shown that Ameritech Illinois' actions are per se impediments to competition as prohibited by Sections 13-514(2), (6), (9), (11) of the Public Utilities Act;

(6) Z-Tel Communications, Inc. has shown that Ameritech Illinois' actions violate Section 13-801 of the Public Utilities Act;

(7) Z-Tel Communications Inc.'s requests for relief should be granted as modified herein;

(8) in this proceeding, penalties **are required to be imposed** ~~may not be imposed~~ on Ameritech pursuant to 13-516(a)(2);

~~(9) in any future proceeding where Ameritech is found to be in violation of Section 13-514 of the Act, the Commission may impose penalties;~~

(10) the Commission should initiate a proceeding against Ameritech to determine ~~whether the Commission should seek the imposition of civil penalties~~ **the appropriate amount of penalties to be assessed against Ameritech under Sections 13-516 for violating Section 13-514, and** under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act;

(11) pursuant to Section 13-515(g), Ameritech is directed to pay the Commission's costs of investigation and conduct of the proceedings herein; such costs shall be paid into the Public Utility Fund within 60 days after receiving notice of the assessments from the Commission.

IT IS THEREFORE ORDERED that Ameritech comply with the Commission's directives as contained herein.

IT IS FURTHER ORDERED that in any future proceeding where Ameritech Illinois is found to be in violation of Section 13-514 of the Act, the Commission may impose penalties pursuant to Section 13-516(a)(2).

IT IS FURTHER ORDERED by the Illinois Commerce Commission that a proceeding be initiated, with the proper notice, against Ameritech ~~whether the Commission should seek the imposition of civil penalties~~ **the appropriate amount of penalties to be assessed against Ameritech under Sections 13-516 for violating Section 13-514, and** under Sections 13-304 and 13-305 of the Act for the failure of Ameritech to comply with Section 13-801 of the Act.

IT IS FURTHER ORDERED that Ameritech is made a respondent to this proceeding and that said respondent appear at a time and place established by the Administrative Law Judge appointed in this proceeding and show cause and present evidence why the Commission should not seek the judicial relief specified in Finding (10) above.

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